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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 BILL LIETZKE,

7 Plaintiff,

8 v.

9 CITY OF PHILADELPHIA, ET AL.,

10 Defendants.

Case No. 2:20-cv-00922-GMN-DJA

11 **REPORT AND RECOMMENDATION**

12 This matter is before the Court on *pro se* Plaintiff Bill Lietzke's Application for Leave to  
13 Proceed *in forma pauperis* (ECF No. 1), filed on May 21, 2020.

14 The Court has a duty to ensure that it has subject matter jurisdiction over the dispute before  
15 it, an issue it may raise at any time during the proceedings. *See, e.g.*, Fed. R. Civ. P. 12(h)(3).  
16 Federal courts are courts of limited jurisdiction and possess only that power authorized by the  
17 Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). "A federal court is presumed  
18 to lack jurisdiction in a particular case unless the contrary affirmatively appears." *Stock West, Inc.*  
19 *v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). "The  
20 party asserting federal jurisdiction bears the burden of proving that the case is properly in federal  
21 court." *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (*citing McNutt v. General*  
22 *Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

23 In this case, Plaintiff indicates he is a resident of Alabama and has sued the City of  
24 Philadelphia and its police officers indicating they pointed guns at him while arresting him and  
25 falsely imprisoning him. *See, e.g.*, ECF No. 1-1.<sup>1</sup> The complaint does not establish this Court's

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28 <sup>1</sup> As Plaintiff is proceeding *pro se*, the Court construes his arguments liberally. *See, e.g., Erickson*  
*v. Pardus*, 551 U.S. 89, 94 (2007).

1 subject matter jurisdiction or that this is the correct venue and it is clear that amendment cannot  
2 cure that deficiency.

3 **RECOMMENDATION**

4 As the Court is lacking subject matter jurisdiction, the undersigned **RECOMMENDS** that  
5 the case be **DISMISSED** without prejudice to Plaintiff seeking relief in Alabama and that his  
6 application to proceed *in forma pauperis* (ECF No. 1) be **DENIED** as moot.

7 **NOTICE**

8 Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation must be  
9 in writing and filed with the Clerk of the Court within (14) days after service of this Notice. The  
10 Supreme Court has held that the courts of appeal may determine that an appeal has been waived  
11 due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142  
12 (1985), *reh'g denied*, 474 U.S. 1111 (1986). The Ninth Circuit has also held that (1) failure to file  
13 objections within the specified time and (2) failure to properly address and brief the objectionable  
14 issues waives the right to appeal the District Court's order and/or appeal factual issues from the  
15 order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*  
16 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

17 DATED: May 22, 2020.

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20 DANIEL J. ALBREGTS  
21 UNITED STATES MAGISTRATE JUDGE  
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